

REMARKS/ARGUMENTS***Brief Summary of Status***

Claims 1-12, 49-59 are pending in the application.

Claims 1-12, 49-53 and 58 are rejected.

Claims 54-57, 59 are subject to restriction/election.

Restriction/election requirement

The Examiner asserts:

“2. Amended claims and new claims belong to separate classes as follows.

I. Claims 1-12, 49-53, 58, drawn to Voice over Internet Protocol (VoIP) network, classified in class 370, subclass 352.

II. Claims 54-57, 59, drawn to Wireless Network, classified in class 455, subclass 554.2.” 1. (office action, Part of Paper No./Mail Date 20090220, p. 2)

The Applicant respectfully requests reconsideration of the election/restriction pursuant to 37 CFR § 1.143, and the Applicant provides the reasons therefore below.

The Applicant respectfully points out that claim 1 is an independent claim.

The Applicant respectfully points out that all other pending claims are dependent claims that depend either directly or interveningly upon independent claim 1.

The Applicant respectfully asserts that it is improper to place a dependent claim into a different class than the independent claim from which it depends either directly or interveningly.

Dependent claims 54-57, 59 all depend either directly or interveningly on independent claim 1.

35 U.S.C. § 112, fourth paragraph, states, in part, “a claim in dependent form shall contain ... a further limitation of the subject matter claimed ... [and] shall be construed to incorporate by reference all the limitations of the claim to which it refers”. In the present U.S. utility patent application, dependent claims 54-57, 59 properly dependent from independent claim 1, which corresponds to at least one disclosed embodiment of the invention. Thus, by definition, dependent claims 54-57, 59 provide additional limitations to the at least one embodiment covered by independent claim 1. As

such, independent claim 1 and dependent claims 54-57, 59 are providing varying breadth and/or scope of definition of the at least one disclosed embodiment.

MPEP 806.03 states, in part, “where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct invention; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition”. Accordingly, claim 54-57, 59 should not be subject to restriction since they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.

As such, the Applicant respectfully asserts that dependent claims 54-57, 59 are by definition providing additional limitations to the at least one embodiment covered by independent claim 1, and as such, they are directed to the same invention.

As such, the Applicant respectfully asserts that restriction therebetween is improper.

The Applicant respectfully requests that the Examiner withdraw the election/restriction requirement.

The Applicant provisionally elects claims 1-12, 49-53, 58, but the Applicant again respectfully asserts that the Examiner’s election/restriction requirement is improper.

If the Examiner rejects the Applicant’s request for reconsideration, the Applicant requests that the Examiner make the election/restriction final so that the Applicant may petition the Director to review the requirement for election/restriction.

35 U.S.C. § 112

In the above-referenced office action, the Examiner asserts the following:

“5. Claims 1-12, 49-53, 58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

...

7. Claims 1-12, 49-53, 58 recite the limitation "the at least one additional VoIP terminal" in line 16-17 of independent claim 1. There is insufficient antecedent basis for this limitation in the claim." (office action, Part of Paper No./Mail Date 20090220, p. 3-4)

The Applicant respectfully traverses.

On page 4 of the office action, with respect to the Examiner assertion that “the instant application discloses only one service level for monitoring real-time communications (Specification, Paragraph 0013, pg. 7 ll. 19-20)” is inaccurate.

In multiple locations throughout the specification, the Applicant teaches and discloses continuous monitoring of whether or not a service can be improved with either a new communication pathway or coding scheme (e.g., see p. 9 [0018], p. 20 [0053], p. 30 [0072], p. 30 [0073]). As such, there is more than one service (i.e., and correspondingly more than one service level) at which communications, including real-time communications, may be supported.

The fact that the service can be modified from one service to another (i.e., if the “service can be improved with either a new communication pathway or coding scheme”), then more than one service level (i.e., 2 or more service levels) for real-time communication if the service may be modified (i.e., from a first service level to a second service level if the “service can be improved with either a new communication pathway or coding scheme”.

As one explicit example of this teaching and disclosure, on page 30, [0073], “These quality monitoring functions monitor, in real-time, the measured and perceived quality of real-time communications. In addition to monitoring these levels of quality, communication pathways and coding schemes may be dynamically reconfigured to improve the measured and perceived level of quality.”

More than one service level is monitored in real-time (i.e., “monitoring these levels of quality”). As such, for the dynamic reconfiguration “to improve the measured and perceived level of quality”, more than one service level is therefore monitored to allow the changing from a first service level of quality to a second service level of quality in an effort “to improve the measured and perceived level of quality”.

The Applicant respectfully requests that the Examiner withdraw these rejections to claims 1-12, 49-53, 58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The Applicant has amended independent claim 1 to correct the antecedent basis issue therein.

As such, the Applicant respectfully requests that the Examiner withdraw these rejections to claims 1-12, 49-53, 58 based on insufficient antecedent basis.

35 U.S.C. § 103

In the above-referenced office action, the Examiner asserts the following:

“9. Claims 1-2, 4, 6, 10, 49-51, 53, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Civanlar (US Patent No. 6,339,594 B1), and further in view of Shah (US Patent No. 7,307,980 B1), and further in view of Fall (US Patent Application Publication No. 2003/0067941 A1).” (office action, Part of Paper No./Mail Date 20090220, p. 5)

The Applicant respectfully traverses.

The Examiner equivalences Civanlar’s PC 71 with Applicant’s at least one VoIP terminal. The Applicant respectfully points out that Civanlar’s PC 71 is communicated with via the Internet 53 (i.e., see Civanlar’s FIG. 2, “PCs 71 and 72 (which are connected to the Internet 53)” see Civanlar, col. 4, line 21). All communications with Civanlar’s PC 71 is achieved via a singular network (i.e., not a first network and a second network that is different than the first network).

Considering Civanlar’s FIG. 2 and FIG. 4, it appears that all communications provided to the PC 71 is via the Internet 53 and the only interface thereto is provided via interface block 311; the interface block 311 couples to Internet 53 via the interface bus 301. As such, a singular network interface (i.e., “interface block 311”) is employed to communicate with the Internet 53 that couples to Civanlar’s PC 71. Civanlar’s FIG. 4 explicitly shows a singular network interface (i.e., “interface block 311”) that couples via a singular network (i.e., “Internet 53”) that couples to Civanlar’s PC 71.

In contradistinction, Civanlar teaches and discloses a singular network interface (i.e., “interface block 311”) that provides communications via a singular network (i.e., “Internet 53”) that couples to Civanlar’s PC 71. There are not two networks that connect to the PC 71 via two separate network interfaces in Civanlar.

There does not appear to be any other network interface (i.e., there is only the “interface block 311”) or network (i.e., there is only the “Internet 53”) by which communications are provided to Civanlar’s PC 71 (e.g., see Civanlar’s FIG. 2).

According to the Examiner-identified sections of Civanlar, Civanlar fails to teach and disclose, among other subject matter limitations, a first network interface coupled to service packetized communications with at least one Voice over Internet Protocol (VoIP) terminal within a first network; a second network interface coupled to service the packetized communications with the at least one VoIP terminal via a second network.

In other words there are 2 separate network interfaces (i.e., first network interface and second network interface) that communicate with the at least one VoIP terminal via a first network and a second network, respectively.

Moreover, on page 5 of the office action, the Examiner refers to “Fig. 4 item 109 one of the interfaces to first gateway” and “Fig. 4 item 109 any interface other than the interface to above first gateway”.

However, each signal provided via bus 109 is to a separate and distinct gateway that couples to a separate and distinct, respective subscriber (i.e., not to a common/same subscriber). For example, “each gateway services one subscriber in each of the three diverse networks”. (Civanlar, col. 8, lines 45-46, emphasis added).

This is a one-to-one connectivity in Civanlar (i.e., via one network to one device).

In contradistinction, the Applicant claims a many to one connectivity in which a first network interface services communications to at least one VoIP terminal within a first network and a second network interface services communications to the at least one VoIP terminal (i.e., the same VoIP terminal) within a second network.

In other words, each gateway communicates with a different respective subscriber; two separate gateways do not communicate with a single/common subscriber. Therefore, Civanlar fails to teach and disclose, among other subject matter limitations, a first network interface coupled to service packetized communications with at least one Voice over Internet Protocol (VoIP) terminal within a first network; a second network interface coupled to service the packetized communications with the at least one VoIP terminal via a second network.

Civanlar identifies items 104, 204, and 304 as “processing elements”; items 311, 312, and 313 as “interfaces”; and item 105 as a “database”.

As can be seen in Civanlar's FIG. 4, interface 312 couples to a first network (telephony network 313), interface 311 couples to a second network (Internet 53), and interface 313 couples to a third network (ATM/FR network 57). Again, Civanlar's PC 71 is accessible only via the Internet 53 (FIG. 2).

Different devices are accessible via different networks in Civanlar. For example, in Civanlar's FIG. 2, telephone 61, fax machine/telephone 62 and PC 63 are connected to the telephony network 313. However, PCs 71 and 72 are connected to the Internet 53. Workstations 81 and 82 are connected to the ATM/FR network 57. (see Civanlar, col. 4, lines 16-23)

As can be seen, each respective device is accessible via one respective and corresponding network (i.e., a one-to-one connectivity). None of these devices is accessible via a first network interface that connects via a first network and also simultaneously via a second network interface that connects via a second network.

Also, in the Examiner cited col. 6, lines 29-63, Civanlar teaches and discloses that different speech encoding is employed when communicating with "two or more IP terminals".

Civanlar teaches and discloses:

"However, when two or more IP terminals are involved, the situation is more complicated. This is particularly so when the [different] IP terminals that participate in the connection employ different speech encoding algorithms." (Civanlar, col. 41-44, emphasis added) In other words, different encoding is performed when communicating with different "IP terminals" operate using "different speech encoding algorithms".

However, when communicating with a particular "IP terminal", Civanlar necessarily always employs the "speech encoding algorithm" that corresponds thereto as it must comply with the "speech encoding algorithm" employed by that "IP terminal" that receives those communications [so the communications may be properly decoded].

As such, it would appear that the teaching and disclosure of Civanlar would be inoperable if a change were to be made from a first coding scheme to a second coding scheme, as the "IP terminal" to which communications are directed employs a particular "speech encoding algorithm"; as such, the appropriate "speech encoding algorithm" must

be applied to communications provided to a particular device so those communications may be properly decoded upon receipt thereby.

Therefore, a particular “speech encoding algorithm” employed is specifically selected based on the “IP terminal” to which communications are being directed. In other words, any select-ability of the “speech encoding algorithm” employed for communications provided to a particular “IP terminal” to which communications are being directed.

The connectivity of devices and communications within Civanlar is different than is claimed by the Applicant.

Civanlar fails to teach and disclose communications to the PC 71 via a first network interface and a first network and also via a second network interface and a second network.

Civanlar teaches and discloses communications to the PC 71 via only the Internet 53, and that being via a singular interface, namely, the interface block 311.

In Civanlar, because there is only one singular network interface (interface block 311) and one network communication pathway (Internet 53) by which communications are provided to the PC 71, Civanlar necessarily fails also to teach and disclose any management of communications provided to a singular device (i.e., PC 71) via a first network interface via a first network and also via a second network interface via a second network in accordance with the subject matter as claimed by the Applicant.

The Applicant respectfully asserts that, in Civanlar, not only are communications provided to a particular device via only one, singular network path (e.g., via Internet 53 to PC 71), but the “speech encoding algorithm” is also specific to the particular “IP terminal” to which communications are being directed.

The Applicant respectfully asserts that Civanlar is deficient in teaching and disclosing the subject matter limitations as identified by the Examiner.

The programmable codec related subject matter as the Examiner associates with Shah would be inappropriate to combine with Civanlar, as a particular “speech encoding algorithm” is employed and specifically selected based on the “IP terminal” to which communications are being directed in Civanlar.

If the communications of Civanlar were modified dynamically in accordance with the Examiner-cited characterization of the teaching and disclosure of Shah, they would be changed from a first “speech encoding algorithm” (i.e., by which an “IP terminal” expects communications to be encoded for decoding) to a second “speech encoding algorithm” (i.e., that the “IP terminal” is not operative to decode), and then the “IP terminal” would not be able to decode such communications.

The Applicant respectfully asserts that Shah fails to cure the deficiency of Civanlar.

In the Examiner-cited [0017] of Fall, there is only one singular network disclosed.

Fall teaches and discloses:

“[0017] The present invention provides for methods 20 or algorithms 20 that improve quality of service (QoS) for a wireless or dynamic network. The methods 20 or algorithms 20 proactively discover a secondary route for every real-time user flow through the wireless or dynamic network. The present invention is referred to as precedence-based routing/rerouting.” (Fall, [0017], emphasis added)

There is only a singular “a wireless or dynamic network” therein. There is not a first network interface that supports communications via a first network and also a second network interface that supports communications via a second network in accordance with the subject matter as claimed by the Applicant.

This subject matter in Fall is based on routing/re-routing within a single network, not based on communications provided among multiple (two or more) networks.

The Applicant respectfully asserts that Fall fails to cure the deficiency of Civanlar and/or Shah.

The Applicant respectfully asserts that Civanlar, Shah, and Fall, when considered individually or together, fails to teach and disclose the subject matter as claimed by the Applicant in these claims.

In view of at least these comments made above, the Applicant respectfully believes that independent claim 1 rejected above is patentable over these cited references.

The Applicant respectfully believes that these dependent claims rejected above, being further limitations of the subject matter as claimed in allowable independent claims, respectively, are also allowable.

As such, the Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

In the above-referenced office action, the Examiner asserts the following:

“10. Claims 3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Civanlar, Shah and Fall as applied to claim 1 above, and further in view of Skemer (US Patent No. 6,570,849 B1).” (office action, Part of Paper No./Mail Date 20090220, p. 10)

The Applicant respectfully traverses.

The Applicant respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, and Fall.

The Applicant also respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, Fall, and Skemer.

The Applicant respectfully asserts that the inclusion of Skemer fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully believes that the inclusion of Skemer fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully asserts that Civanlar, Shah, and Fall, and Skemer, when considered individually or together, fails to teach and disclose the subject matter as claimed by the Applicant in these claims.

The Applicant respectfully believes that these dependent claims rejected above, being further limitations of the subject matter as claimed in allowable independent claims, respectively, are also allowable.

As such, the Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

In the above-referenced office action, the Examiner asserts the following:

“11. Claims 3, 5, 7, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Civanlar, Shah and Fall as applied to claims 1, 6 above, and further in view of Leung (US Patent Application Publication No. 2002/0087711 A1).” (office action, Part of Paper No./Mail Date 20090220, p. 11)

The Applicant respectfully traverses.

The Applicant respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, and Fall.

The Applicant also respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, Fall, and Leung.

The Applicant respectfully asserts that the inclusion of Leung fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully believes that the inclusion of Leung fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully asserts that Civanlar, Shah, and Fall, and Leung, when considered individually or together, fails to teach and disclose the subject matter as claimed by the Applicant in these claims.

The Applicant respectfully believes that these dependent claims rejected above, being further limitations of the subject matter as claimed in allowable independent claims, respectively, are also allowable.

As such, the Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

In the above-referenced office action, the Examiner asserts the following:

“12. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Civanlar, Shah and Fall as applied to claim 6 above, and further in view of Murphy (US patent No. 6,282,192 B1).” (office action, Part of Paper No./Mail Date 20090220, p. 12)

The Applicant respectfully traverses.

The Applicant respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, and Fall.

The Applicant also respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, Fall, and Murphy.

The Applicant respectfully asserts that the inclusion of Murphy fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully believes that the inclusion of Murphy fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully asserts that Civanlar, Shah, and Fall, and Murphy, when considered individually or together, fails to teach and disclose the subject matter as claimed by the Applicant in these claims.

The Applicant respectfully believes that these dependent claims rejected above, being further limitations of the subject matter as claimed in allowable independent claims, respectively, are also allowable.

As such, the Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

In the above-referenced office action, the Examiner asserts the following:

“13. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Civanlar, Shah and Fall as applied to claim 1 above, and further in view of Cheung (US Patent No. 6,515,964 B1).” (office action, Part of Paper No./Mail Date 20090220, p. 14)

The Applicant respectfully traverses.

The Applicant respectfully traverses.

The Applicant respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, and Fall.

The Applicant also respectfully asserts that independent claim 1 is allowable over Civanlar, Shah, Fall, and Cheung.

The Applicant respectfully asserts that the inclusion of Cheung fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully believes that the inclusion of Cheung fails to overcome the deficiencies of Civanlar, Shah, and Fall.

The Applicant respectfully asserts that Civanlar, Shah, and Fall, and Cheung, when considered individually or together, fails to teach and disclose the subject matter as claimed by the Applicant in these claims.

The Applicant respectfully believes that this dependent claim rejected above, being a further limitation of the subject matter as claimed in an allowable independent claim, is also allowable.

As such, the Applicant respectfully requests that the Examiner withdraw the rejections of this claim.

The Applicant respectfully believes that the pending claims are in condition for allowance and respectfully requests that they be passed to allowance.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present U.S. utility patent application.

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